

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking Concerning  
Energy Efficiency Rolling Portfolios, Policies,  
Programs, Evaluation, and Related Issues.

Rulemaking 13-11-005  
(Filed November 14, 2013)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES  
ON PROPOSED DECISION PROVIDING GUIDANCE  
FOR INITIAL ENERGY EFFICIENCY ROLLING PORTFOLIO  
BUSINESS PLAN FILINGS**

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## I. INTRODUCTION

Pursuant to Rule 14.3(a) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA") respectfully submits the following comments on Administrative Law Judge Julie Fitch's *Proposed Decision Providing Guidance for Initial Energy Efficiency Rolling Portfolio Business Plan Filings* ("PD").

The PD makes significant strides in changing the mechanisms for procuring and implementing energy efficiency in California. In general, ORA supports these changes, and expects they are likely to improve the cost effectiveness of energy efficiency offerings and increase innovation. In particular, the move towards reducing the Investor Owned Utility ("IOU") role in implementation, and utilizing a transparent competitive solicitation model that is more aligned with other Commission-directed mechanisms such as energy procurement are likely to reduce costs to ratepayers and increase customer value.

ORA recommends the Commission adopt the PD with the following modifications:

- The Commission should establish a clear policy preference for IOU administration and third party implementation of programs by requiring that all energy efficiency programs meet either the Statewide or Third Party definition unless an IOU can demonstrate that it can implement the program more cost effectively.
- For specific instances where an IOU successfully demonstrates it should be the implementer of an energy efficiency program or activity, the Commission should require that the IOU be compensated based on pay-for-performance terms.
- The Commission should require the IOUs to convene energy efficiency Procurement Review Groups ("PRGs") of non-financially interested parties, assisted by Independent Evaluators ("IEs"), to oversee the preparation of competitive solicitations and ensure the fair evaluation of the bids.
- The Commission should clarify that the budget true-up for statewide programs will be retrospective as well as prospective to ensure that the

costs for statewide programs appropriately correspond to the benefits accruing to ratepayers in each territory.

- The Commission should require the Program Administrators (“PAs”) to jointly file a Tier 1 advice letter within 30 days of the effective date of the decision specifying which PA will be the lead administrator for each statewide program included in the decision.
- The PD appropriately determines that goals should revert to net instead of gross to align PA targets with state policy goals.
- The PD appropriately removes codes and standards from PA goals and from goal achievement to avoid double-counting savings.
- The PD provides a generally reasonable policy for calculating the baseline for measuring savings, but should be modified to incorporate Energy Division’s Baseline White Paper<sup>1</sup> (“Baseline White Paper”) proposal concerning major alterations in order to target incremental savings and reduce free-ridership.
- The Commission should allocate 27.5 percent of total EM&V budgets to PAs and 60 percent to Energy Division (“ED”) staff. An additional 12.5 percent should be initially allocated to ED, but be made available for IOUs to access to pursue incremental (“EM&V”) Evaluation Measurement and Verification activities related to new measurement activities such as those related to Normalized Metered Energy Consumption (“NMEC”).
- The Commission should require PAs to file a Tier 2 advice letter within 30 days of the publication of the annual EM&V Plan in order to request transfer of any earmarked funds and detailing the incremental activities the additional EM&V funds would be used to support.
- The Commission should direct Commission Staff to include a review of EM&V administrative expenses for reasonableness and adequate cost controls in the next annual audit of EE program administrators.

## **II. DISCUSSION**

The Commission should establish a clear policy preference for IOU administration and third party implementation of programs procured through competitive solicitations.

The PD should be revised to require all program implementation activities to be

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<sup>1</sup> Energy Division *Staff White Paper on Energy Efficiency Baselines*, corrected version issued April 27, 2016.

performed by third parties, with the IOUs acting solely as program administrators, by 2020. The PD states that “all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personal.”<sup>2</sup> It then sets a minimum target of 60 percent of the utilities’ budget portfolio for design and delivery by third parties by the end of 2020. This 60 percent target is inconsistent with the logic in the PD that establishes a rebuttable presumption that implementation activities would be more efficiently performed by third parties through a competitive solicitation process. In proposing the 60 percent target, the PD discusses “‘back office’ types of work, such as rebate fulfillment, data capture and management, and even marketing.”<sup>3</sup> Each of these types of work has its own budget: administration, EM&V, and Marketing Education and Outreach, (“ME&O”). They are separate from implementation. Therefore, ORA recommends that this minimum target be removed. The Commission should set a target of 100 percent of program design and delivery to be outsourced, with the understanding that some limited, justified exceptions may be made for programs that could be implemented by utilities, provided they meet specified performance criteria at a lower per-unit price than other market actors can provide. The procurement process will provide market discovery and ensure that the most cost effective programs are being delivered.

In the event that an Investor-Owned Utility (“IOU”) does show compelling evidence that it can implement a specific program more effectively and at lower cost than other qualified bidders, the IOU should be compensated on a pay-for-performance basis. This approach would ensure that the IOU is only collecting revenues from ratepayers when it meets specific performance criteria for its implementation services. Pay-for-performance compensation provides greater transparency than time-and-materials

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<sup>2</sup> PD at p. 63.

<sup>3</sup> PD at pp. 63-64.

compensation and would assure the Commission, stakeholders, and competing bidders that the IOU-implemented program is providing greater value for ratepayer money than other offerings in the market.

Ordering Paragraph 11 should be modified to read:

Each utility administrator shall propose in their business plan filings a plan to transition to at least 60 percent of their *entire* portfolios to be outsourced to third parties as defined in Ordering Paragraph 9 by the end of 2020.

*Should the utility administrator decide that in-house implementation is preferable, it would have to provide a proposal that would compete against third parties using least cost best fit methodologies. If an IOU is successful in demonstrating it would be the best implementer of a particular program activity, the IOU shall be compensated on a pay-for-performance basis identical to those offered to other market participants.*

- A. The Commission should require the IOUs to convene energy efficiency Procurement Review Groups (“PRGs”) of non-financially interested parties, assisted by Independent Evaluators (“IEs”), to oversee the preparation of competitive solicitations and ensure the fair evaluation of bids**

The benefits of establishing a transparent procurement process for energy efficiency will only be realized if the PAs follow a robust procurement process. ORA notes that the PD is silent on the process through which third party contractors will be selected. The Commission should address this omission

PAs currently use a variety of procurement arrangements including direct contract awards. This makes it difficult for the Commission and stakeholders to assess whether ratepayers are receiving the best value for their money. The Commission should require PAs to procure energy efficiency implementation services through competitive solicitations using a “least cost-best fit” evaluation method similar to that used for other supply-side resources. To assure that the bidding and contracting processes are fair and transparent, the Commission should restructure the energy efficiency Peer Review Groups to more closely resemble the Procurement Review Groups (“PRGs”) utilized in other supply-side solicitations. These newly constituted Energy Efficiency Procurement Review Groups should include Commission Staff and representatives of non-financially

interested parties and should be led by an Independent Evaluator (“IE”) who has sufficient technical expertise to evaluate the reasonableness and fairness of the bid solicitation and evaluation processes and ensure that only the most effective bids are selected to achieve the State’s goals.

**B. The Commission should clarify that the budget true-up for statewide programs will be retrospective as well as prospective in order to ensure that the costs for statewide programs correspond to the benefits accruing to ratepayers in each territory**

The PD should be revised to ensure the budget true-up process for statewide programs appropriately shares costs among ratepayers in various utility territories. The PD states that budgets for statewide programs should be trued-up annually in order to ensure that the costs and benefits of statewide programs flow proportionately to ratepayers in each service territory. In fairness to ratepayers in each territory, this true-up should align costs and benefits for the past program year as well as reapportion upfront cost allocations for the coming program year based on the prior year’s program uptake and costs. To achieve this equitable result, the PD should clarify that the true-up will be both retrospective and prospective.

Ordering Paragraph 6 should be modified as follows:

Costs for each statewide program shall be budgeted and trued up annually *both retrospectively and prospectively* based on actual customer participation in each utility service territory. The budget for each statewide program in each utility territory shall be counted towards the cost-effectiveness of each utility’s energy efficiency portfolio.



**C. The Commission should require the PAs to jointly file a Tier 1 advice letter within 30 days of the effective date of the decision specifying which PA will be the lead administrator for each statewide program included in the decision**

The PD states that “[t]he program administrators shall present, in their business plans, their approach for each of the above programs to be delivered (at a minimum, along with any others they deem appropriate) and the proposed assignment of statewide lead administrator for each.”<sup>4</sup> In addition to presenting this information in their business plans, the PAs should file a joint Tier 1 advice letter with ED 30 days after the decision is voted out informing the Commission as to which PAs will be responsible for which statewide programs. This would allow ED to review the choices and resolve any disagreements before the information is included in the Business Plans and avoid delays in Business Plan approval.

Ordering Paragraph 8 should be modified as follows:

The program administrators shall propose in their business plan filings at least four downstream programs to be piloted on a statewide basis and shall include a proposed lead administrator and other program details. *The PAs shall file a joint Tier 1 advice letter informing the Commission of which PAs will be responsible for which statewide programs within 30 days after the decision is adopted by the Commission.*

**D. The PD appropriately determines that goals should revert to net instead of gross to align PA targets with state policy goals**

The PD correctly determines that goals should revert to net instead of gross to align PA targets with state policy goals. The PD adopts a default policy of an existing conditions baseline, with exceptions, as directed by Assembly Bill (“AB”) 802.<sup>5</sup> Commission Staff argued in its Baseline White Paper that using existing conditions as a default baseline increases the potential for free ridership and double-counting of savings

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<sup>4</sup> PD at p. 56.

<sup>5</sup> AB 802 (Williams), chaptered October 8, 2015. Available at: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB802](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB802).

due to the overlap with naturally occurring efficiency gains from equipment turnover and the effects of codes and standards. In order to manage the risk that the change in baseline would result in ratepayer funds being diverted to projects that would have happened without any intervention on the part of an energy efficiency program, Commission Staff recommended returning to net goals in order to motivate PAs to pursue efficiency gains that are incremental to what would have happened in the absence of efficiency programs. The PD adopts the Commission Staff recommendation, noting that “the shift to a default existing conditions baseline...creates a real and significant risk of a widening gap between expected and actual free ridership if programs target projects that customers have traditionally undertaken without any program intervention.”<sup>6</sup>

ORA supports the PD’s determination on this matter and observes that in addition to helping mitigate the risk of increased free ridership and double counting, a return to net goals better aligns ratepayer-funded efficiency programs with the State goals of reducing greenhouse gas (“GHG”) emissions. Program interventions that produce incremental efficiency have tangible effects on energy systems through reductions in the demand for energy and GHG emissions. By contrast, program activities targeting projects that would have happened regardless of the program intervention produce no additional reduction in demand and therefore no additional reduction in GHG emissions. Net goals that reward PAs for pursuing only incremental efficiency gains that will reduce GHG emissions align ratepayer-funded efficiency programs with State goals and support the achievement of the State’s ambitious GHG reduction targets.

**E. The PD appropriately removes Codes and Standards from PA goals and from goal achievement to avoid double-counting savings**

As the PD explains, the new baseline policy raises the potential for significant double counting of savings through the overlap of two sets of programs – codes and

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<sup>6</sup> PD at pp. 18-19.

standards advocacy programs and incentive programs – claiming the same increment of below code savings. In order to address this double counting issue, the PD removes codes and standards advocacy savings from both PA goals and credit towards achievement of those goals.

The PD’s removal of codes and standards advocacy from goals and goal achievement is reasonable. With a shift to a default baseline policy based on existing conditions, PA portfolios will likely shift to target more below code savings opportunities that were traditionally counted as savings achieved by codes and standards advocacy programs but which PAs and others have argued are actually unachieved, stranded potential. This shift exacerbates double counting concerns and undermines the reliability of efficiency savings estimates. As the PD notes, “[i]t is not appropriate to ‘have it both ways’ by counting savings associated with advocacy work while also counting the savings as having been achieved through programs using an existing conditions baseline.”<sup>7</sup> Rather, the removal of codes and standards advocacy from PA goals will enable PAs to focus on achieving the Commission’s resource savings goals and produce a more reliable accounting of their achievements.

**F. The PD provides a generally reasonable policy for calculating the baseline for measuring savings, but should be modified to incorporate Energy Division’s Baseline White Paper proposal concerning major alterations in order to target incremental savings and reduce free ridership**

The PD adopts a default existing conditions baseline policy with exceptions for specific market sectors, programs, and measures where an existing conditional baseline is not a reasonable default baseline. Overall, the PD strikes a reasonable balance between the requirements laid out in AB 802 for the use of existing conditions as the default baseline and cases where an existing conditions baseline is inapplicable or likely to produce adverse consequences. The adoption of net goals and the removal of codes and

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<sup>7</sup> PD at p. 28.

standards advocacy savings from goals provide sensible assurance that the change in default baseline will motivate PAs to pursue greater incremental savings rather than just “paper savings” that may fail to deliver verifiable grid impacts.

There remains, however, a risk that a substantial portion of ratepayer-funded incentives will flow to code-compliant projects that would have happened otherwise, leading to declining net-to-gross ratios for some customer segments. This risk is of particular concern in major renovations of commercial establishments in the new tenant retail space, chain commercial establishments, and office space customer segments. These customer and building types are where major renovations are most likely to comply with applicable codes and standards and which would occur regardless of program intervention. As the Baseline White Paper points out, many commercial retail spaces are regularly gutted and renovated to meet code when properties turn over and new commercial tenants take occupancy in the absence of program incentives.<sup>8</sup> Many chain commercial establishments and Class A office space have devoted operations and/or capital budgets that support code-compliant maintenance and regularly scheduled capital upgrades, again in the absence of any ratepayer-funded intervention.<sup>9</sup>

The PD creates a revision to policy that would increase the likelihood of projects receiving incentives that currently occur and bring facilities up to code without any financial incentives. This baseline policy change would allow some projects to use an existing conditions baseline as a basis for justifying ratepayer funding, potentially resulting in a substantial increase in free ridership without producing any additional energy savings. Greater free ridership would in turn flow to the net-to-gross ratios applied to all projects in those customer segments, reducing the cost-effectiveness of program interventions and potentially leading to adverse consequences for projects that are truly incremental.

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<sup>8</sup> Baseline White Paper at p. 22.

<sup>9</sup> Baseline White Paper at p. 23.

In order to reduce the risk of declining net-to-gross ratios and to support more precise targeting of incremental savings in the commercial sector, the PD should be modified to incorporate ED's Baseline White Paper proposal for major alterations. ED's proposal requires that major alterations in certain customer segments utilize a default code or standard baseline unless they meet a set of qualifying requirements for exceptions in order to target incremental savings and reduce free ridership. ED's proposal is a reasonable guideline for parsing major renovation projects that are most likely to meet code regardless of program intervention and those where program activities would produce code savings that are truly incremental. The qualifying requirements for using an existing conditions baseline would target hard-to-reach markets where code-compliant projects are less likely. It would also permit an existing conditions baseline for programs utilizing experimental designs that can demonstrate program influence or programs that provide documentation showing that the program influenced a customer's decision to undertake a major alteration.

**G. The Commission should allocate 27.5 percent of total EM&V budgets to PAs and 60 percent to ED, but be made available for IOUs to access to pursue incremental Evaluation, Measurement, and Verification ("EM&V") activities related to new measurement activities such as those related to Normalized Metered Energy Consumption ("NMEC")**

The PD increases the EM&V budget allocation for PAs from 27.5 percent to 40 percent of the total EM&V budget while reducing the ED allocation from 72.5 percent to 60 percent. The justification in the PD for the change in EM&V budget allocations is the incremental NMEC measurement activities associated with the implementation of AB 802 and the need for market assessment studies to support SB 350's focus on market transformation.

The reasonableness of an increase in budget allocation for PAs depends in large part on how quickly the PAs transition their portfolios to NMEC programs that require greater PA investments in upfront measurement and verification work as well as the market studies they plan to undertake. Since PAs have to date only filed a handful of

High Opportunity Programs and Projects (“HOPPs”) utilizing NMEC and will not file business plans until January 2017, there is a distinct likelihood that the need for additional funds will not materialize in 2017 and that evaluation responsibilities that the PD envisions transitioning to the PAs from ED will in fact remain with ED. However, under such a scenario the PD would require ED to carry out its responsibilities with substantially less resources due to the new allocation.

In order to facilitate the transition to NMEC programs while ensuring that ED has sufficient resources to carry out its mandated EM&V tasks, the Commission should initially allocate 27.5 percent of the EM&V budget to PAs and 60 percent to ED. The remaining 12.5 percent should be initially allocated to ED but earmarked for transfer to PAs to support incremental EM&V activities. In order to access the fund, the Commission should require PAs to file a Tier 2 advice letter within 30 days of the publication of the annual EM&V Workplan requesting transfer of any earmarked funds and detailing the incremental activities the additional EM&V funds would be used to support. Any unrequested or unapproved EM&V funds would revert to the ED EM&V budget to support its critical EM&V responsibilities.

**H. The Commission should direct Commission Staff to include a review of EM&V administrative expenses for reasonableness and adequate cost controls in the next annual audit of EE program administrators**

The PD “encourage[s] the program administrators to keep their administrative expenses as low as possible and to track and disclose them publicly.”<sup>10</sup> The proportion of IOU EM&V funds spent on administrative/fixed costs is high, particularly when contrasted with comparable ED EM&V administrative costs that are orders of magnitude lower.<sup>11</sup> In order to shed greater light on the reasonableness of PA EM&V administrative

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<sup>10</sup> PD at p. 70.

<sup>11</sup> ORA EM&V/ESPI Opening Comments at pp. 9-11.

expenses and establish consistent definitions of cost categories to facilitate clear accounting, the Commission should direct PAs to document and track the activities that EM&V administrative funds are being used for. The Commission should also direct Commission Staff to include a review of PA EM&V administrative expenses in the next annual audit of EE PAs.

### **III. CONCLUSION**

For the foregoing reasons, ORA respectfully recommends that the Commission adopt the PD with the modifications described above.

Respectfully submitted,

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## APPENDIX

### PROPOSED REVISIONS TO ORDERING PARAGRAPHS

#### Ordering Paragraph 6:

Costs for each statewide program shall be budgeted and trued up annually *both retrospectively and prospectively* based on actual customer participation in each utility service territory. The budget for each statewide program in each utility territory shall be counted towards the cost-effectiveness of each utility's energy efficiency portfolio.

#### Ordering Paragraph 8:

The program administrators shall propose in their business plan filings at least four downstream programs to be piloted on a statewide basis and shall include a proposed lead administrator and other program details. *The PAs shall file a joint Tier 1 advice letter informing the Commission of which PAs will be responsible for which statewide programs within 30 days after the decision is adopted by the Commission.*

#### Ordering Paragraph 11:

Each utility administrator shall propose in their business plan filings a plan to transition to at least 60 percent of their *entire* portfolios to be outsourced to third parties as defined in Ordering Paragraph 9 by the end of 2020.

*Should the utility administrator decide that in-house implementation is preferable, it would have to provide a proposal that would compete against third parties using least cost best fit methodologies. If an IOU is successful in demonstrating it would be the best implementer of a particular program activity, the IOU shall be compensated on a pay-for-performance basis identical to those offered to other market participants.*